

## **PROFESSIONAL SERVICES CONTRACT**

This agreement (the "Contract") entered into this 5th day of January 2010, by and between SHELBY COUNTY GOVERNMENT, hereinafter referred to as "COUNTY" and The Crisis Center, hereinafter referred to as "CONSULTANT AGENCY."

### **WITNESSETH**

**WHEREAS**, it is necessary to develop and operate an HIV Care Hotline for the Ryan White Program of Shelby County Government; and

**WHEREAS**, CONSULTANT AGENCY is desirous of and has the knowledge and expertise to provide said services.

**NOW THEREFORE**, for and in consideration of mutual promises and covenants herein contained, the parties hereto agree as follows:

1. The CONSULTANT AGENCY shall develop and operate an HIV Care Hotline for Shelby County Government as described in the "Scopes and Services" provided in Attachment 1. Services will be developed under the instruction and supervision of COUNTY staff. Work is to be performed to the satisfaction of the COUNTY, said satisfaction will not be unreasonably withheld.
2. The term of this contract will begin upon execution of the contract and continue through July 31, 2010.

The COUNTY agrees to compensate the CONSULTANT AGENCY for the provision of said Services for a total amount not to exceed Four Hundred and Thirty Thousand AND 00/100 (\$430,000.00) Dollars (the "Fee") during the term of this Contract which shall include all reimbursable expenses. The County shall make equal payments of \$61,428.00 on the fifth day of each month, with the first installment due within twenty (20) working days after the execution of the contract. The Contractor shall submit a Monthly Expenditure Report and a computerized ledger report or other detailed report as acceptable to the County detailing allowable costs as defined the Budget Section in Attachment 1 of this Contract within 15 days following the month in which costs were incurred. All payments shall be reconciled to actual expenditures on a monthly basis and the County shall notify the Contractor of any ineligible or unallowable costs and request a meeting within ten (10) days to review any disputed item(s). Should any expenditure be confirmed as ineligible or unallowable, the County shall deduct that amount from the next regular installment due to the Contractor. Under no circumstances shall the total amount paid to the Contractor exceed the total allowable costs incurred in any Contract period. The County retains the right to audit backup documentation at the Contractor's site(s) upon request during regular business hours. If actual expenditures are significantly below installment amounts for an extended period of time, the County reserves the right to adjust the installments accordingly.

The parties further agree as follows:

1. CONTROL

All Services by the CONSULTANT AGENCY will be performed in a professional manner and in accordance with the generally accepted business practices and procedures of the COUNTY.

2. INDEPENDENT STATUS

Nothing in this Contract shall be deemed to represent that the CONSULTANT, or any of the CONSULTANT AGENCY's employees or agents, are the agents, representatives, or employees of the COUNTY. The CONSULTANT AGENCY will be an independent Contractor over the details and means for performing its obligations under this Contract. Anything in this Contract which may appear to give the COUNTY the right to direct the CONSULTANT AGENCY as to the details of the performance of its obligations under this Contract or to exercise a measure of control over the CONSULTANT AGENCY is solely for purposes of compliance with local, state and federal regulations and means that the CONSULTANT AGENCY will follow the desires of the COUNTY only as to the intended results of the scope of this Contract.

It is further expressly agreed and understood by CONSULTANT AGENCY that neither it nor its employees or agents are entitled to any benefits which normally accrue to employees of the COUNTY; that CONSULTANT AGENCY has been retained by the COUNTY to perform the Services specified herein (not hired) and that the remuneration specified herein is considered fees for the Services performed (not wages) and that invoices submitted to the COUNTY by CONSULTANT AGENCY for Services performed shall be on the CONSULTANT AGENCY's letterhead.

3. TERMINATION OR ABANDONMENT

It shall be cause for the immediate termination of this Contract if, after its execution the COUNTY determines that the CONSULTANT AGENCY has plead nolo contendere, or has plead or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, or any other collusive and illegal activity pertaining to bidding and governmental contracting.

It shall be cause for the immediate termination of this Contract if, after its execution, the COUNTY determines that CONSULTANT AGENCY subcontracted, assigned, delegated, transferred its rights, obligations or interests under this Contract without the COUNTY's consent or approval.

It shall be cause for the immediate termination of this Contract if, after its execution, the COUNTY determines that CONSULTANT AGENCY has filed bankruptcy, becomes insolvent or makes an assignment for the benefit of creditors, or a receiver, or similar officer has been appointed to take charge of all or part of CONSULTANT AGENCY'S assets.

The COUNTY may terminate the Contract upon five (5) days written notice by the COUNTY or its authorized agent to the CONSULTANT AGENCY for CONSULTANT AGENCY's failure to provide the Services specified under this Contract.

This Contract may be terminated by either party by giving thirty (30) days written notice to the other, before the effective date of termination (the "Termination Date"). In the event of such termination, the CONSULTANT AGENCY shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the Termination Date; however, CONSULTANT AGENCY shall

not be reimbursed for any anticipatory profits that have not been earned as of the date of the Termination Date.

All work accomplished by CONSULTANT AGENCY prior to the Termination Date shall be recorded and tangible work documents shall be transferred to and become the sole property of the COUNTY prior to payment for the Services rendered.

4. SUBCONTRACTING, ASSIGNMENT OR TRANSFER

Any subcontracting, assignment, delegation or transfer of all or part of the rights, responsibilities, or interest of either party to this Contract is prohibited unless by written consent of the other party. No subcontracting, assignment, delegation or transfer shall relieve the CONSULTANT AGENCY from performance of the Services under this Contract. The COUNTY shall not be responsible for the fulfillment of the CONSULTANT AGENCY's obligations to its transferors or subcontractors.

Upon the request of the other party, the subcontracting, assigning, delegating or transferring party shall provide all documents evidencing the assignment.

5. CONFLICT OF INTEREST

The CONSULTANT AGENCY covenants that it has no public or private interest, and will not acquire directly or indirectly any interest which would conflict in any manner with the performance of the Services. The CONSULTANT AGENCY warrants that no part of the total Contract Fee shall be paid directly or indirectly to any officer or employee of Shelby County Government as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor to the CONSULTANT AGENCY in connection with any work contemplated or performed relative to this Contract.

6. COVENANT AGAINST CONTINGENT FEES

The CONSULTANT AGENCY warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the CONSULTANT AGENCY, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT AGENCY any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the COUNTY will have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

7. ACCESS TO RECORDS

During all phases of the work and Services to be provided hereunder, CONSULTANT AGENCY agrees to permit duly authorized agents and employees of the COUNTY to enter CONSULTANT AGENCY's offices for the purpose of inspections, reviews and audits during normal working hours. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places. The CONSULTANT will maintain all books, documents, papers, accounting records, and other evidence pertaining to the Fee paid under this Contract and make such materials available at their offices at all reasonable times during the Term of this Contract and for three (3) years from the date of payment under this Contract for inspection by the COUNTY or by any other governmental entity or agency participating in the funding of this Contract, or any authorized agents thereof. Copies of said records shall be furnished to the COUNTY upon request.

8. USE OF INSTITUTION NAME

The use by COUNTY of CONSULTANT AGENCY's name or any other names, insignia, symbol(s), or logotypes associated with CONSULTANT AGENCY or any variant or variants thereof in advertising, publicity, or other promotional activities is expressly prohibited unless required by law or written consent is provided by CONSULTANT.

9. NOTIFICATION OF CLAIMS

CONSULTANT AGENCY shall immediately notify the COUNTY, c/o Shelby County Government, Contracts Administration, 160 N. Main Street, Suite 550, Memphis, TN 38103, of any claim or suit made or filed against CONSULTANT or its subcontractors regarding any matter resulting from or relating to CONSULTANT AGENCY's performance of the Services under this Contract and will cooperate, assist and consult with the COUNTY in the defense or investigation thereof.

The COUNTY has no obligation to provide legal counsel or defense to CONSULTANT AGENCY or its subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this agreement against CONSULTANT as a result of or relating to obligations under this agreement.

10. GENERAL COMPLIANCE WITH LAWS

If required, The CONSULTANT AGENCY certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it will take such action as, from time to time, may be necessary to remain so qualified and it shall obtain, at its expense all licenses, permits, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

The CONSULTANT AGENCY is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the performance of the Services. The preceding shall include, but is not limited to, compliance with all Equal Employment Opportunity laws, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA) requirements, and the Americans with Disabilities Act (ADA).

This Contract shall be governed, construed and enforced in accordance with the laws of the State of Tennessee as the site for performance of this Contract without regard to its conflict of laws. By execution of this Contract, the CONSULTANT AGENCY agrees that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Contract will be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Contract submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

11. NON-DISCRIMINATION

Both parties hereby agree, warrant, and assure whole or in part that no person shall be excluded from participation or be denied benefits of or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the CONSULTANT AGENCY on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee State Constitutional or statutory law. The CONSULTANT AGENCY shall upon request show proof of such non-discrimination and shall post in conspicuous places available to all employees and applicants notices of non-discrimination.

12. ENTIRE AGREEMENT

This Contract contains the entire Contract of the parties and there are no other promises or conditions in any other Contract whether oral or written. This Contract supersedes any prior written or oral contracts between the parties.

13. AMENDMENT

This Contract may be modified or amended, only if the amendment is made in writing and is signed by both parties.

14. SEVERABILITY

If any provision of this Contract is held to be unlawful, invalid or unenforceable under any present or future laws, such provision shall be fully severable; and this Contract shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Contract shall remain in full force and effect and shall not be affected by such unlawful, invalid or unenforceable provision or by its severance here from. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Contract a legal, valid and enforceable provision as similar in terms to such unlawful, invalid or unenforceable provision as possible.

15. NO WAIVER OF CONTRACTUAL RIGHT

No waiver of any term, condition, default, or breach of this Contract, or of any document executed pursuant hereto, shall be effective unless in writing and executed by the party making such waiver; and no such waiver shall operate as a waiver of either (a) such term, condition, default, or breach on any other occasion or (b) any other term, condition, default, or breach of this Contract or of such document. No delay or failure to enforce any provision in this Contract or in any document executed pursuant hereto shall operate as a waiver of such provision or any other provision herein or in any document related hereto. The enforcement by any party of any right or remedy it may have under this Contract or applicable law shall not be deemed an election of remedies or otherwise prevent such party from enforcement of one or more other remedies at any time.

16. MATTERS TO BE DISREGARDED

The titles of the several sections, subsections, and paragraphs set forth in this contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Contract.

17. SUBJECT TO FUNDING

This Contract is subject to annual appropriations of funds by the Shelby County Government. In the event sufficient funds for this Contract are not appropriated by Shelby County Government for any of its fiscal period during the Term hereof, then this Contract will be terminated. In the event of such termination, the CONSULTANT AGENCY shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the Termination Date.

18. INCORPORATION OF WHEREAS CLAUSES

The foregoing whereas clauses are hereby incorporated into this Contract and made a part hereof.

19. LIVING WAGE ORDINANCE

In accordance with Ordinance Number 328, commonly referred to as the Living Wage Ordinance, all persons/entities engaged in service contracts with the County, including but not limited to both prime and subcontractors, shall pay a Living Wage to employees for all work performed on said service contract, as defined in the Living Wage Ordinance. Proof of such compensation must be evidenced as required in the Living Wage Ordinance.

20. DISCLOSURE OF REPORTS, DATA OR OTHER INFORMATION

Notwithstanding anything to the contrary contained herein or within any other document supplied to COUNTY by CONSULTANT AGENCY, CONSULTANT AGENCY understands and acknowledges that COUNTY is a governmental entity subject to the laws of the State of Tennessee and that any reports, data or other information supplied to COUNTY by CONSULTANT AGENCY due to Services performed pursuant to this Contract is subject to being divulged as a public record in accordance with the laws of the State of Tennessee.

21. NOTICE

Any notices required or permitted to be given under the provisions of this Contract shall be effective only if in writing and delivered either in person to the COUNTY's authorized agent or by First Class or U.S. Mail to the addresses set forth below, or to such other person or address as either party may designate in writing and deliver as herein provided:

COUNTY: Shelby County Government  
160 N. Main Street, Suite 801  
Memphis, Tennessee 38103  
Attn.: Dottie Jones  
901-545-4274

*and*

Shelby County Government  
Contract Administration  
160 N. Main St., Suite 550  
Memphis, Tennessee 38103

VENDOR: The Crisis Center  
70 N. Pauline  
Memphis, Tennessee 38103  
901-351-9986

22. INSURANCE REQUIREMENTS

a. The CONSULTANT shall purchase and maintain, in a company or companies licensed to do business in the State of Tennessee, such insurance as will protect the County from claims which may arise out of or result from the CONSULTANT's operations under the Contract, whether such operations are performed by himself or by any subcontractors or by anyone directly or indirectly employed by any of them, or by anyone for whose acts the CONSULTANT or subcontractor may

be liable.

b. The insurance required shall be written for not less than any limits of liability specified or required by law, whichever is greater. Shelby County Government, its elected officials, appointees and employees will be named as additional insured. The CONSULTANT will maintain throughout the life of this Contract insurance, through insurers rated A- or better by A.M. Best, in the following minimum requirements. All policies shall provide for thirty (30) days written notice to COUNTY of cancellation or material change in coverage provided:

i) Professional Liability Insurance - \$1,000,000.00 per claim/\$3,000,000.00 annual aggregate, indicating if coverage is on occurrence basis or claims-made.

ii) Commercial General Liability Insurance - \$1,000,000.00 limit per occurrence bodily injury and property damage/\$1,000,000.00 personal and advertising injury/\$2,000,000.00 General Aggregate/\$2,000,000.00 Products-completed Operations Aggregate, indicating the coverage is provided on a claims-made or on an occurrence basis. The insurance shall include coverage for the following:

- a. Premises/Operation;
- b. XCU coverage, where applicable;
- c. Products/Completed Operations;
- d. Contractual Liability;
- e. Independent Contractors;
- f. Broad Form Property Coverage;
- g. Personal Injury.

iii) Workers Compensation and Employers' Liability Insurance – Workers Compensation statutory limits as required by Tennessee. This policy should include Employers' Liability Coverage for \$1,000,000.00 per accident.

iv) Business Automobile Liability Insurance - \$1,000,000.00 each accident for property damage and personal injury. Coverage is to be provided on all owned/leased autos, non-owned autos and hired autos.

c. CONSULTANT shall provide County with a current copy of the Certificate of Insurance at the time of contracting and shall maintain said insurance during the entire Contract period as well as provide renewal copies on each anniversary date. The certificate holder is to read:

Shelby County Government  
Purchasing Department  
160 N. Main, Suite 550  
Memphis, TN 38103

d. Upon termination or cancellation of insurance currently in effect under this Contract, the CONSULTANT shall purchase an extended reporting endorsement and furnish evidence of same to the County.

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IN WITNESS WHEREOF, the parties by and through their fully authorized representatives, have set their signatures for the purposes contained herein, on the date first above written.

APPROVED: SHELBY COUNTY GOVERNMENT

Contract Administrator/ Joe Ford, Interim Mayor

Assistant County Attorney

The Crisis Center

BY:



Michael LaBonte

TITLE: Executive Director

CORPORATE ACKNOWLEDGMENT

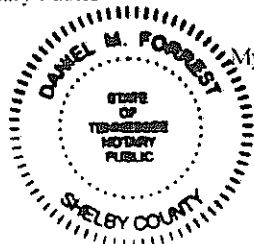
STATE OF Tennessee

COUNTY OF Shelby

Before me, the undersigned Notary Public, in and for the State and County aforesaid, personally appeared Michael LaBonte, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself/herself to be president or other officer authorized by appropriate Corporate action and/or Resolution to execute the preceding instrument of the Crisis Center, the within named bargainor, a corporation, and that he as such Executive Director, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself/herself as Executive Director.

WITNESS my hand and official seal at office this 11<sup>th</sup> day of January 2010.

Notary Public



My Commission Expires: March 20, 2013